COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 371 of 2003

U.P.S.R.T.C. …. **Appellant.**

Versus

Smt.Mintra Devi
And others. ……**Respondents.**

Coram: Hon'ble P.C.Verma, J.,
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988, ***(in short the Act)*** against the judgment and Award dated 07-08-2003 passed in M.A.C. Case No. 11 of 2001, Smt. Mintra Devi Vs. U.P.S.R.T.C. and another, by Motor Accident Claims Tribunal/ District Judge Hardwar ***(in short the Tribunal),*** whereby the learned Tribunal has allowed the claim petition and has awarded Rs.4,54,500/- as compensation along with interest @ 9% per annum, as mentioned in the impugned order, in favour of the claimant-respondent under Section 166 of the Act as against the appellant. Aggrieved, the U.P.S.R.T.C.-appellant has come up in appeal for setting aside the impugned judgment and award passed by the learned Tribunal mainly on the ground that the accident in question was not the result of rash and negligent driving of driver of the bus in question; but on the part of driver of the motor cycle No. U.P. 10-D-2943, that the deceased was not holding a valid driving licence and that the quantum of compensation is not based on the evidence on record.

Brief facts, giving rise to the present appeal, are that Charan Singh (***the deceased***) was going on his motor bike No. UP 10D-2943 along with his brother Raj Kumar and nephew Kulwendra Singh on 24.12.2000. As soon as the deceased reached near Lahar Hotel a little ahead of Bhagwanpur, the motor cycle was hit at about

6.00 p.m., by a UPSRTC bus No. 15J-8419 being driven rashly and negligently by its driver, with the result the deceased sustained grievous injuries and died. Kulvendra Singh also died in the Government Hospital Hardwar. The report of the accident was lodged. The claim petition has been preferred by the legal heirs and dependents of the deceased. The opposite parties have contested the case by filing joint written statement. The learned Tribunal framed necessary issues in the case. Ultimately, the Tribunal has come to the conclusion that the motor accident resulting into injuries and consequent death of the deceased was caused due to rash and negligent driving by the driver of the offending bus. Finally, the leaned Tribunal has awarded compensation of Rs. 4,54,500/- along with interest @ 9% per annum in favour of the claimants, as mentioned in the impugned order, against the O.P.No.1-appellant.

We have heard learned counsel for the appellant, Sri Ashish Joshi as well as learned counsel for the claimant-respondents, Sri Vivek Shukla, and have carefully gone through the entire material available on record.

It has been vehemently argued on behalf of the appellant, UPSRTC, that the motor accident was not caused due to rash and negligent driving by the driver of the bus involved in the accident, but the accident was the result of own negligence and rashness on the part of the motor-cyclist, the deceased. It has been submitted that the driver of the bus was driving the vehicle at moderate speed, therefore, the findings of the learned Tribunal to the contrary are liable to be set aside. We have considered the entire evidence available on record on this point. In this case, the claimants have field the photocopy of the First Information Report, the site plan of the place of occurrence. These documents prima facie show that the accident was caused due to the rash and negligent driving by the driver of the bus. The most important aspect of the case is that the accident in question is admitted to the opposite parties, but they have disputed the manner of accident. Besides, the O.P.-appellant in

support of its case has produced the driver of the bus involved in the accident in the witness box. We have scrutinized the testimony of this witness. This witness, D.W.1, Ramesh Chandra, driver of the bus, has not even stated that he had reported the matter to his department in his examination-in-chief. Had the driver been innocent, there was no reason why he would have not reported the accident to his employer/department. It is not at all the case of the appellant that the driver of the bus has made a report of the accident with the police. On the other hand, the claimants have adduced as many as three witnesses, namely, P.W.1, Smt. Mintara Devi, P.W. 2, Karan Singh, son of Badam Singh and P.W.3, Mange Singh, son of Santap Singh. We have closely gone through the statements of all these witnesses. A perusal of the statements of claimants' witnesses coupled with the first information report and especially the charge-sheet submitted in the criminal court against the driver of the offending bus, it is crystal clear that the motor accident resulting into injuries and death of the deceased was caused due to rash and negligent driving by the driver of the bus No. U .P. 15J-8419 and it was not the outcome of the negligence on the part of the deceased, who was driving the motorbike. The learned counsel for the appellant could not explain as to why the charge-sheet has been submitted against the driver of the offending bus had he been innocent. The learned counsel could not even point out that the charge-sheet filed in the present case related to some other accident. The First Information Report, the Charge-sheet and the site plan of the place of accident, field on record clearly make out a prima facie case against the driver of the offending bus. The witness produced by the appellant, namely, D.W.1, Ramesh Chandra, could not dare say in his statement on oath that he had reported the accident to his department. These are very strong circumstance against the appellant, therefore, considering the totality of the entire evidence on record, we are of the view that the learned Tribunal has rightly held that the motor accident in question was caused due trash and negligent driving by the driver of the bus involved in the accident. And we are not inclined to take a different view.

The appellant has challenged the quantum of compensation in the memo of appeal, but no argument has been advanced before us on this score. From a perusal of record, we find that the learned Tribunal has relied on the testimony of widow of the deceased, P.W.1 Mintara Devi. She has stated that the deceased was earning Rs. 4,500/- per month from the work of electric appliances, etc. It has been mentioned in the claim petition that the deceased was engaged in the shop of electronics. The opposite parties have not controverter the testimony of claimants' witness P.W.1 Mintara Devi on the point of income of the deceased. The Tribunal has 3 (1/3rd being the pers0onal expenses of the deceased) =36,000/-. The age of the deceased was 25 years, therefore, multiplier of 18 has been applied to determine the total loss of dependency, which comes to 18 x 36,000 = 6,48,000/-. The Tribunal has further deducted 1/3rd of this amount towards lump sum payment of the compensation and thereby it has been held that the claimants are entitled to get Rs.4,50,000/- as loss of dependency. In addition, the Tribunal has awarded Rs. 2,000/- towards funeral expenses and sum of Rs. 2,500/- towards loss of estate. Thus, the Tribunal has awarded total compensation of Rs. 4,54,500/- along with interest @ 9% per annum in favour of the claimants, as mentioned in the impugned order. Considering the facts and circumstances of the case from all the four corners, we are of the view that the amount of ***Rs. 4,54,500/-*** is a just and adequate amount of compensation. The learned Tribunal has not committed any error or illegality, therefore, we have no option but to uphold the judgment and award under appeal.

No other point was urged or argued before us in this appeal.

In the result, the appeal preferred by the U.P.S.R.T.C. is devoid of merit and is liable to be dismissed.

The appeal is dismissed. The judgment and award, appealed against, is upheld. No order as to costs.

The amount in deposit with this Court shall be remitted to the Motor Accident Claims Tribunal concerned, for being paid to the claimants.

17-09-2004 **(B .S.Verma, J.)** **(P.C. Verma, J.)**

RCP